

Assembly Bill No. 53

Passed the Assembly August 22, 2012

Chief Clerk of the Assembly

Passed the Senate August 20, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add and repeal Article 10.2 (commencing with Section 927) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, relating to insurers.

LEGISLATIVE COUNSEL'S DIGEST

AB 53, Solorio. Insurers: procurement contracts: minority, women, and disabled veteran business enterprises.

Existing law requires each admitted insurer to provide information to the Insurance Commissioner on all of its community development investments and community development infrastructure investments in California.

This bill would require that each admitted insurer with premiums written equal to or in excess of \$100,000,000 submit to the commissioner, by July 1, 2013, a report on its minority, women, and disabled veteran-owned business procurement efforts, as specified. The bill would provide that the failure to file the report by July 1, 2013, subjects the admitted insurer to civil penalties to be fixed and enforced by the commissioner, as provided.

The bill would require, among other things, that commencing July 1, 2015, each eligible admitted insurer biennially update its supplier diversity report and submit a new report, containing additional elements, to the commissioner no later than July 1.

The bill would require that, by July 31, 2013, the commissioner establish and maintain a link on the department's Internet Web site that provides public access to the contents of each admitted insurer's report on minority, women, and disabled veteran-owned business procurement efforts.

The bill would provide that these provisions shall remain in effect only until January 1, 2019.

The people of the State of California do enact as follows:

SECTION 1. Article 10.2 (commencing with Section 927) is added to Chapter 1 of Part 2 of Division 1 of the Insurance Code, to read:

Article 10.2. Minority, Women, and Disabled Veteran Business Enterprises

927. The Legislature finds and declares all of the following:

(a) It is in the state's interest to encourage competitive business opportunities for all of its people. Insurers are uniquely positioned to build relationships within the communities they serve through the development, inclusion, and utilization of certified minority, women, and disabled veteran-owned business enterprises whenever possible. National companies are able to leverage buying power to save costs to the benefit of policyholders.

(b) By providing that each major insurer submit to the Insurance Commissioner a report explaining the insurer's supplier diversity statement and expressing its goals regarding certified minority, women, and disabled veteran-owned business enterprises, and the commissioner placing that information on the department's Internet Web site, that online resource will help facilitate these supplier relationships.

927.1. For the purposes of this article, the following definitions apply:

(a) "Control" means to exercise the power to make policy decisions.

(b) "Disabled veteran business enterprise" has the same meaning as defined in subparagraph (A) of paragraph (7) of subdivision (b) of Section 999 of the Military and Veterans Code, or any successor provision. Disabled veteran business enterprise certification eligibility requirements shall be consistent with those imposed by the Department of General Services, and this section applies only to those disabled veteran business enterprises certified by the Department of General Services.

(c) "Minority business enterprise" means a business enterprise, physically located in the United States or its trust territories, that is at least 51 percent owned by a minority group or groups, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more minority groups, and whose management and daily business operations are controlled by one or more of those individuals. "Minority" includes African Americans, Hispanic Americans, Native Americans, and Asian Pacific Americans who provide proof of United States citizenship or legal resident alien status.

(d) “Operate” means to be actively involved in the day-to-day management of the enterprise and not to be merely officers or directors.

(e) “Women business enterprise” means a business enterprise physically located in the United States or its trust territories, that is at least 51 percent owned by a woman or women, or, in the case of any publicly owned business at least 51 percent of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more of those individuals, who provide proof of United States citizenship or legal resident alien status.

927.2. (a) (1) By July 1, 2013, each admitted insurer, with California premiums written of one hundred million dollars (\$100,000,000) or more, shall submit a report to the commissioner on its minority, women, and disabled veteran-owned business procurement efforts during the reporting period.

(2) The report shall include all of the following:

(A) The insurer’s supplier diversity policy statement.

(B) The insurer’s outreach and communications to minority, women, and disabled veteran business enterprises, including:

(i) How the insurer encourages and seeks out minority, women, and disabled veteran owned business enterprises to become potential suppliers.

(ii) How the insurer encourages its employees involved in procurement to seek out minority, women, and disabled veteran-owned business enterprises to become potential suppliers.

(iii) How the insurer conducts outreach and communication to minority, women, and disabled veteran business enterprises.

(iv) How the insurer supports organizations that promote or certify minority, women, and disabled veteran-owned business enterprises.

(v) Information regarding appropriate contacts at the insurer for interested business enterprises.

(C) The report shall include information about which procurements are made from minority, women, and disabled veteran business enterprises with at least a majority of the enterprise’s workforce in California, with each category aggregated separately, to the extent that information is readily accessible. An insurer may also include other relevant information in the report.

(3) An insurer that does not enter into contracts to procure goods or services in California satisfies the requirements of paragraph (2) by filing a statement with the commissioner attesting that it does not enter into procurement contracts in California.

(b) Nothing in this section shall be construed to require quotas, set-asides, or preferences in an admitted insurer's procurement of goods or services, nor does this section apply to insurer producer or licensee contracts. Admitted insurers retain the authority to use business judgment to select the supplier for a particular contract.

(c) Nothing in this section shall preclude an admitted insurer that is a member of an insurance holding company system, as defined in Article 4.7 (commencing with Section 1215) of Chapter 2, from complying with paragraphs (1) and (2) of subdivision (a) through a single filing on behalf of the entire group of affiliated companies.

(d) Failure to file the report required by subdivision (a), by July 1, 2013, shall subject the admitted insurer to a civil penalty to be fixed by the commissioner, not to exceed five thousand dollars (\$5,000), or if the act or practice was willful, a civil penalty not to exceed ten thousand dollars (\$10,000). An insurer may request, and the commissioner may grant, a 30-day extension to file the report if needed due to unintended or unforeseen delays. If the insurer has failed to file the report within 30 days of a written notice by the commissioner that the insurer has failed to file the report, the commissioner may find that the failure to file the report was willful and increase the civil penalty to an amount not to exceed ten thousand dollars (\$10,000). The penalty imposed by this section shall be enforced by the commissioner and is appealable by means of any remedy provided by Section 12940, or by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. This subdivision is the sole means for enforcement of this section.

(e) Commencing July 1, 2015, each admitted insurer specified in subdivision (a) shall biennially update its supplier diversity report and submit the new report to the commissioner no later than July 1.

(f) By July 31, 2013, the commissioner shall establish and maintain a link on the department's Internet Web site that provides public access to the contents of each admitted insurer's report on minority, women, and disabled veteran-owned business

procurement efforts. The commissioner shall include a statement on the department's Internet Web site that the information contained in the insurer's report on minority, women, and disabled veteran-owned businesses is provided for informational purposes only.

927.3. This article shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

Approved _____, 2012

Governor